

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products : No. MDL 15-02641-PHX-DGC
Liability Litigation :
:

**DECLARATION OF LAURA SMITH IN SUPPORT OF RESPONSE TO
MOTION OF LAW OFFICES OF BEN C. MARTIN AND MARTIN|BAUGHMAN
TO REDUCE AND EXEMPT CLIENT RECOVERIES FROM COMMON
BENEFIT FEE AND EXPENSE ASSESSMENT**

I, Laura Smith, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney at Heaviside Reed Zaic. I am licensed and in good standing to practice law in the states of California and Louisiana.

2. I am the administrator of the *In re: Bard IVC Filters Products Liability Litigation*, MDL 2641, Trial Package (hereinafter “MDL Trial Package”) hosted by the online file-storage service company Dropbox, with a “Business Advanced” subscription.

3. Only members of the PSC and attorneys who have provided signed copies of the Bard IVC Filter Litigation MDL Joint Prosecution Agreement, and members of their staff, receive access to the MDL Trial Package via an invitation to the Dropbox from either myself or Julia Reed Zaic.

4. The PEC selected the Dropbox platform due the familiarity most users have with the Dropbox platform; the “Business Advanced” subscription was chosen for its ability to track usage in order to maintain confidentiality of sensitive materials.

5. As the administrator, I have access to the “admin console.” This feature allows me to perform various functions including the ability to obtain any user’s history and activity.

6. I performed a search of the users associated with the Law Offices of Ben C. Martin and Martin Baughman from the date each individual received access to the MDL Trial Package through February 2, 2022.

7. The results are as follows:

- Judy Garner, litigation paralegal for Ben C. Martin, jgarner@bencmartin.com, accessed the trial package 4,903 times from October 24, 2019 to December 27, 2021. The majority of her activities were “downloaded files and/or folders” and “copied files and/or folders.”
- Kevin DeRita, trial technician for Ben C. Martin, kevinderita@gmail.com, accessed the trial package 231 times from August 4, 2020 to March 29, 2021. The majority of his activities were “downloaded files and/or folders.”
- Jason Voelke, attorney for Martin Baughman, jvoelke@martinbaughman.com, accessed the trial package 209 times from November 8, 2019 to September 11, 2021. The majority of his activities were “downloaded files and/or folders” and “previewed files and/or folders.”
- Ben Martin, sole owner of the Law Offices of Ben C. Martin and a shareholder of the law firm of Martin Baughman, bmartin@bencmartin.com, accessed the trial package 10 times from October 27, 2019 to September 24, 2020. The majority of his activities were “downloaded files and/or folders.”

- Laura Baughman, lbaughman@martinbaughman.com, accessed the trial package 3 times from October 18, 2019 to May 31, 2020. Her activities were “previewed files and/or folders” and copying files.
- Tom Arbon, tarbon@benmartin.com, accessed the trial package 1 time on August 27, 2021 to “download files/and or folders” He downloaded Chris Ganser’s deposition and exhibits.

8. Additionally, I reviewed several docket entries associated with *Conn v. Bard, et al.*, Cause No. 4:14-cv-00298, Southern District of Texas, Houston Division, via PACER to compare filings with the content of the MDL Trial Package in order to obtain information on the extent to which Martin Baughman relied on the MDL Trial Package. *Conn* is included in the reference “cases” in Docket No. 22144-1, Declaration, at paragraph 7 (hereinafter the “Declaration”): “[t]he work-up of these cases for trial required significant time and resources.”

9. Specifically, I reviewed plaintiff’s oppositions to motions *in limine*, minute entries from the two days of trial, and the *Conn* trial exhibit list.

10. By way of example, the following docket entries relied on MDL work product and documents produced in the MDL:

- Docket No. 136 Plaintiff’s Response to MIL No. 5 - to exclude evidence concerning RF’s cephalad migration deaths
 - (Attachments: Exhibit C, Expert Report of Christine L. Brauer, Ph.D., dated Apr. 13, 2017).
- Docket No. 245 Plaintiff’s response to MIL No. 11 to Exclude Evidence, Referencing or Arguments Concerning Other Manufacturers of IVC Filters

- (Attachments: Exhibit 2 - Nov. 27, 2002 FDA Letter, # 3 Exhibit 3 - July 25, 2003 FDA Letter, # 4 Exhibit 4 - Aug 29, 2005 G2 510(k) Submission, # 5 Exhibit 5 - G2 510(k) submission & Jan 15, 2008 FDA Clearance Ltr., # 6 Exhibit 6 (TBF Under Seal), # 7 Exhibit 7 (TBF Under Seal), # 8 Exhibit 8 Remedial Action Plan, Jan 4, 2005, # 9 Exhibit 9 (TBF Under Seal, # 10 Exhibit 10 - Email from Greer to Alpie and Others, July 16, # 12 Exhibit 12 (TBF Under Seal), # 14 Exhibit 14 - Email between Graves and Simpson, March 23, 2006, # 15 Exhibit 15 - (TBF Under Seal), # 16 Exhibit 16 - (TBF Under Seal), # 17 Exhibit 17 - Wong Depo Excerpts, # 18 Exhibit 18 (TBF Under Seal), # 19 Exhibit 19 - Dec 27, 2005 Email Ciavarella to Walcott, # 20 Exhibit 20 - (TBF Under Seal), # 21 Exhibit 21 - G2 Caudal Migration Report).
- Docket No. 261 Plaintiff's response to MIL No. 2 to Exclude the Irrelevant and Prejudicial Evidence Re the Development of the Recovery Filter
 - (Attachments: Exhibit 2 - FDA RF 510k, Exhibit 3 - FDA RF 2003 510k, Exhibit 16 - Wong depo excerpts, Exhibit 17, Sullivan depo excerpts, Exhibit 18, RF IFU, Exhibit 26- G2 Patient Q&A).
- Docket No. 266 Plaintiff's Response to MIL No. 3 - to exclude evidence concerning RF's cephalad migration deaths
 - (Attachments: exhibits Exhibit 1, Patient Comparison Matrix, BPV-17-01-00035618, Exhibit 2, Dep. David Ciavarella, M.D., dated Aug. 29, 2012, at 60:16-24, Exhibit 3, Traditional 510(k) G2 Filter with Femoral Delivery, FDA_PRODUCTION_00000048-49, Exhibit 4, Expert Report of Robert M. McMeeking, Ph.D., dated March 2, 2017, at 68, Exhibit 5, CMO No. 23 dated March

2, 2018 in In re Bard IVC Filters Prods. Liab. Litig., No. MDL 15-02641-PHX-DGC in the D. Ariz. (MDL ECF Doc. 10323).

- Docket No. 267 Plaintiff's response in Opposed MIL No. 24 to Preclude any Evidence, Reference, or Argument Concerning Hypothetical and Unsupported Current and Future Damages Including Relating to the Impact of Plaintiff's Alleged Injuries on Family and Friends
 - (Attachments: Exhibit 9, Hurst MDL report, Exhibit 13, G2 Caudal migration report March 2, 2006, Exhibit 15, Dec. 27, 2005 email from Ciavarella to Walcott, Exhibit 18 - McMeeking March 3, 2017 MDL report, Exhibit 19 - McMeeking May 11, 2017 MDL rebuttal report).
- Docket No. 347-1 Plaintiff's Amended Trial Exhibit List
- Docket No. 352 Order on Ciavarella deposition designations
- Docket No. 353 Order on Ganser deposition designations
- Docket No. 354 Order on Kandarpa deposition designations

11. *Conn* settled on October 20, 2021, two days into the trial. A total of three witnesses testified. According to the Court's minute entry, two of the three witnesses testified via video depositions from the MDL Trial Package.

12. In the MDL, I led the team that created the MDL Master Exhibit List. I worked on all three MDL bellwether trials, managed all three Master Exhibit Lists, and have personal knowledge of the contents of the MDL Master Exhibit List created for the Bellwether trials which is contained in the MDL Trial Package with electronic copies of over 10,000 listed exhibits. In my review of Docket No. 347-1 Plaintiff's Amended Trial

Exhibit List from *Conn*, I identified that the majority of the non-case specific exhibits are documents produced in the MDL and from the MDL Master Exhibit List contained in the Trial Package.

13. I also reviewed several docket entries via PACER associated with *Couturier v. Bard, et al.*, Cause No. 2:19-cv-12497, Eastern District of Louisiana. This case is included in the reference “cases” in the Declaration of Ben C. Martin at paragraphs 7 and 8: “[t]he work-up of these cases for trial required significant time and resources.”

14. For example, I reviewed Plaintiff’s oppositions to Defendants’ motions *in limine* and the trial exhibit list in the *Couturier* case.

15. The following docket entries within the described review relied on MDL work product and documents produced in the MDL:

- Docket No. 274 Plaintiff’s response to MIL No. 11 1 to Exclude Evidence Concerning Recovery Filter Cephalad Migration Deaths filed by Craig Couturier.
 - (Attachments: # 1 Exhibit 1 - Filed Under Seal, # 2 Exhibit 2 - Dec. 17, 2004, Health Hazard Evaluation, # 3 Exhibit 3 - Ciavarella Depo Excerpt, # 4 Exhibit 4 - Filed Under Seal, # 5 Exhibit 5 - Traditional 510k G2 Filter, # 6 Exhibit 6 - MDL CMO 31)
- Docket No. 268 Plaintiff’s response to MIL No. 5 to Exclude Any Evidence of the Simon Nitinol Filter as a Reasonable Alternative Design filed by Craig Couturier.
 - (Attachments: # 1 Exhibit 1 - 510(k) Submission Excerpts Combined, # 2 Exhibit 2 - Jan 14, 2010 Eclipse Clearance Letter, # 3 Exhibit 3 - Aug 29, 2005 G2 510(k) Submission, # 4 Exhibit 4 - Dec. 17, 2004, Health Hazard Evaluation, # 5 Exhibit 5 - MAUDE Data Through Q3 2005, # 6 Exhibit 6 -

Remedial Action Plan, Jan. 4, 2005, BPVE-01-01019773-825, # 7 Exhibit 7 To Be Filed Under Seal, # 8 Exhibit 8 - Email from J. Greer to Nicole Alpie, July 16, 2005, # 9 Exhibit 9 - Hudnall, Muk. Carr Email August 25-26, 2004, # 10 Exhibit 10 - Recovery PP_August 26, 2004, # 11 Exhibit 11 - G1A Recovery Filter Femoral System Design Verification and Rpt., # 12 Exhibit 12 - Deposition of Abtihal Kubba Dated 7.08.2016, # 13 Exhibit 13- Patrick McDonald Depo Excerpts, # 14 Exhibit 14 - Email chain between Graves and Simpson, # 15 Exhibit 15 - Email from Ganser, Nov 7-14, 2005, # 16 Exhibit 16 To Be Filed Under Seal, # 17 Exhibit 17- Email of Dec. 27, 2005 from Ciavarella, BPVE-01-00028224, # 18 Exhibit 18 To Be Filed Under Seal, # 19 Exhibit 19 To Be Filed Under Seal, # 20 Exhibit 20 - deposition of Jose Mena MD November 3, 2020, # 21 Exhibit 21- McMeeking March 3, 2017 MDL rpt)(Baughman, Laura) Modified text on 6/25/2021 (pp). (Additional attachment(s) added on 7/9/2021: # 22 Sealed Exhibit 7, # 23 Sealed Exhibit 16, # 24 Sealed Exhibit 18, # 25 Sealed Exhibit 19) (pp). (Entered: 06/24/2021)

- Docket No. 266 Plaintiff's response to MIL No. 18 to Preclude any Evidence, Testimony, Reference or Argument That Bard is a Bad Corporate Citizen, That the Jury Should Send a Message or Punish Bard, or That Bard Produces Bad Products filed by Craig Couturier.
 - (Attachments: # 1 Exhibit Eclipse Special 510(k) Submission Summary, BPV 17-01-0011700000117002, # 2 Exhibit 2 - March 7, 2008 FDA Ltr. re: Special 510K notification G2 Express Filter System), # 3 Exhibit 3 - Nov. 27, 2002 FDA Ltr. re: Recovery Filter 510(k) approval, # 4 Exhibit 4 - July 25, 2003 FDA Ltr. re: Recovery Filter 510(k) submission packet and approval (Recovery Retrievable 510(k) Clearance, # 5 Exhibit 5 - FILED UNDER SEAL, # 6 Exhibit 6 - FILED UNDER SEAL, # 7 Exhibit 7 - Remedial Action Plan, Jan. 4, 2005, BPVE-01-01019773-825 at 19777-78,

8 Exhibit 8 - Email from Chris Ganser to T. Ring, April 19, 2005, BPVE-01-00434275-76, # 9 Exhibit 9 - Email Greer to Alpie and others, July 16, 2005, BPV-DEP-00005665-66 at 66, # 10 Exhibit 10 - Executive Summary, Aug. 3, 2005, BPV-17-01-00170083-84, # 11 Exhibit 11 - FILED UNDER SEAL, # 12 Exhibit 12-A - Recovery Filter PowerPoint, Aug. 26, 2004, BPVE-01-00009466-85 at 69-70, # 13 Exhibit 12-B - FILED UNDER SEAL, # 14 Exhibit 13 - G2 510(k) submission and Aug. 29, 2005 FDA clearance ltr, # 15 Exhibit 14 - Email chain between Graves and Simpson, March 23, 2006, BPVE-01-01225832, # 16 Exhibit 15 - FILED UNDER SEAL, # 17 Exhibit 16 - FILED UNDER SEAL, # 18 Exhibit 17 - Depo Excerpts of N. Wong, # 19 Exhibit 18 - FILED UNDER SEAL, # 20 Exhibit 19 - Email of Dec. 27, 2005 from Ciavarella, BPVE-01-00028224, # 21 Exhibit 20 - FILED UNDER SEAL, # 22 Exhibit 21 - G2 Caudal Migration Rpt., March 2, 2006, BPVE-01-00720835, # 23 Exhibit 22 - Bard IVC filter medical articles, # 24 Exhibit 23 - FILED UNDER SEAL, # 25 Exhibit 24 - FILED UNDER SEAL, # 26 Exhibit 25 - FILED UNDER SEAL, # 27 Exhibit 26 - FILED UNDER SEAL, # 28 Exhibit 27 - FILED UNDER SEAL, # 29 Exhibit 28 - FILED UNDER SEAL, # 30 Exhibit 29 - FILED UNDER SEAL)

- Docket No. 263 Plaintiff's response to MIL No. 3 to Evidence, Reference or Arguments Concerning Other Manufacturers of IVC Filters filed by Craig Couturier.
 - (Attachments: # 1 Exhibit 1 To Be Filed Under Seal, # 2 Exhibit 2 To Be Filed Under Seal, # 3 Exhibit 3 Apr. 15, 2004 email from John Lehmann, BVP-17-01-00165419, # 4 Exhibit 4 To Be Filed Under Seal, # 5 Exhibit 5 To Be Filed Under Seal, # 6 Exhibit 6 Hudnall, Mukherjee, Carr email chain, August 25-26, BPVE-01-00008821, # 7 Exhibit 7 To Be Filed Under Seal, # 8 Exhibit 8 Letter from FDA to Bard Peripheral Vascular, August 29, 2005,

FDA_PRODUCTION_00000055-56, # 9 Exhibit 9 BPV-17-01-00137389-921, # 10 Exhibit 10 Wong Dep. at 88,2-89,3, # 11 Exhibit 11 Sullivan Dep. at 464,25-466,22, # 12 Exhibit 12 Health Hazard Evaluation, Dec. 17, 2004, BPVE-01-01019821, # 13 Exhibit 13 BPV-17-01-00137389 - 92 G2 Filter System Instructions for Use, # 14 Exhibit 14 Recovery Filter IFU, 2004, BPV-COMP-00001317-19, # 15 Exhibit 15 Wong Dep. at 88,2-89,3, # 16 Exhibit 16 Sullivan Depo Excerpts, # 17 Exhibit 17 Email chain between Graves and Simpson, March 23, 2006, BPVE-01-01225832, # 18 Exhibit 18 To Be Filed Under Seal, # 19 Exhibit 19 To Be Filed Under Seal, # 20 Exhibit 20 - March 2009 G2X IFU, # 21 Exhibit 21 - Eclipse IFU_BPV-17-01-00144145, # 22 Exhibit 22 - 7923_Meridian Femoral IFU, 1010, # 23 Exhibit 23 To Be Filed Under Seal, # 24 Exhibit 24 To Be Filed Under Seal)

- Docket No. 251 Plaintiff's response to MIL No. 15 to Preclude Any Evidence, Testimony, Reference or Argument Concerning Bard's Corporate Intent, Motivations, or Ethics To Defendants' Motion in Limine No. 15 to Preclude any Evidence, Testimony, Reference, or Argument Concerning Bard's Corporate Intent, Motivations, or Ethics (ECF No. 220) filed by Craig Couturier.
 - (Attachments: # 1 Exhibit 1 - HHE, Dec 17, 2004_BPVE-01-01019821-25)
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- Docket No. 252 Plaintiff's response to MIL No. 2 to Exclude Testimony and Evidence Regarding Bard Employee Robert Carr's "Buffet Line" Email filed by Craig Couturier.
- Docket No 249 Plaintiff's response to MIL No. 11 to Preclude Any Evidence of the FDA Warning Letter filed by Craig Couturier.

- (Attachments: # 1 Exhibit 1 - Nov. 27, 2002 FDA Ltr. re: Recovery Filter 510(k) approval, # 2 Exhibit 2 - July 25, 2003 FDA Ltr. re: Recovery Filter 510(k) submission packet and approval (Recovery Retrievable 510(k) Clearance), # 3 Exhibit 3 - 2 510(k) Submission, BPV 15-01-0012607100126076., # 4 Exhibit 4 - FDA Regulatory Procedures Manual, # 5 Exhibit 5 - Bard 510k submissions for the other filters in Bards G2 filter platform: K093659 (Eclipse); K082305 (G2 Express); K080668 (G2 Express); K073090 (Recovery G2); K050558 (G2))
- Docket No. 232 Plaintiff's response to MIL to Precluding Argument FDA Consent was Needed to Issue Warnings or Otherwise Protect Consumers of Filing Exhibits by Craig Couturier.
 - (Attachments: # 1 Exhibit 1 - Premarket Notification 510(k), # 2 Exhibit 2 - FDA Guidance, Deciding When to Submit a 510(k) for a Change to an Existing Device (Jan. 10, 1997), # 3 Exhibit 3 - Booker Ruling - Doc 10258, # 4 Exhibit 4 - BPVE-01-00276094, # 5 Exhibit 5 - Carr Deposition Nov. 5, 2013, # 6 Exhibit 6 - FILED UNDER SEAL, # 7 Exhibit 7 - BPV-17-01-00052621_IRB, # 8 Exhibit 8 - FILED UNDER SEAL, # 9 Exhibit 9 - FILED UNDER SEAL, # 10 Exhibit 10 - FILED UNDER SEAL, # 11 Exhibit 11 - FILED UNDER SEAL, # 12 Exhibit 12 - FN9_ G2 Marketing Brochure_BPV-17-01-00142912_2915, # 13 Exhibit 13 - Eclipse Vena Cava Filter Ad Brochure, # 14 Exhibit 14 - BPV-17-01-00145692 Vail IVC Concept POA, Randall 2087, dated Oct. 14, 2009., # 15 Exhibit 15 - Bill Edwards Deposition 4-11-17, # 16 Exhibit 16 - Raji Kubba Deposition Excerpts, # 17 Exhibit 17 - 2016 Filter Fracture Analysis, # 18 Exhibit 18 - Modra Depo Excerpts)(Martin, Ben) Modified text on 6/21/2021.
- Docket No. 231 Plaintiff's response to MIL to Exclude Any References To IVC Filters as Life Saving.

- (Attachments: # 1 Exhibit A - Eclipse 510(k) Summary and Clearance, # 2 Exhibit B - Records of office visit with Jose Mena, MD, 11.03.2016, # 3 Exhibit C - 2017.05.10 Rogers Article 2017. Vena Cava Filter Use in Trauma, # 4 Exhibit D - Rogers Depo Excerpts, # 5 Exhibit E - Hudnall Depo Excerpts, # 6 Exhibit F - Hennebry Depo Excerpts, # 7 Exhibit G - Article, Decousus_A Clinical Trial of Vena Cava Filters in the Prevention of PEs, # 8 Exhibit H - 7230_PREPIC Study Group. Eight-year follow-up, # 9 Exhibit I - 2007. billett Efficacy of inferior vena cava filters in anticoagulated patients., # 10 Exhibit J - Sarosiek - Indications Complications and Management of Inferior Vena Cava Filters, # 11 Exhibit K - 2016 - Bikdeli - Vena Caval Filter utilization and outcomes in pulmonary embolism, # 12 Exhibit L - 193 (2) Hemilla, Prophylactic Inferior Vena Cava, # 13 Exhibit M - Mismetti_Effects of a Retrievable IVC Filter Plus Anticoagulation, # 14 Exhibit N - 2019-Ho, Multicenter Trial of Vena Cava Filters in Severely Injured Patients, # 15 Exhibit O - HHE July 9.2004, # 16 Exhibit P - HHE 12.17.2004, # 17 Exhibit Q - Fraser-Johnson - ORDER Granting Pltfs' MIL #3 re Lifesaving Devices, # 18 Exhibit R - Prasad et al., The Inferior Vena Cava Filter-)(Martin, Ben) Modified text on 6/21/2021


16. In my review of Docket No. 277 Plaintiff's Trial Exhibit List from *Couturier*, I identified that the majority of the non-case specific exhibits are documents produced in the MDL and obtained from the MDL Master Exhibit List.

17. I also reviewed several docket entries via PACER associated with *Ebert v. C.R. Bard, et al.*, Cause No. 12-CV-1253 GJP, Eastern District of Pennsylvania.

18. In paragraph 10 of the Declaration, *Ebert v. C.R. Bard, et al.* is provided as an example of “substantial additional work” in regards to the appeal of the summary judgment

order; it is to be noted that Plaintiff Ebert dismissed the appeal due to settlement of the case.

Dated: February 7, 2022



Laura E. Smith